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AMENDED IN ASSEMBLY JUNE 22, 2010

AMENDED IN SENATE JUNE 1, 2010

AMENDED IN SENATE MAY 12, 2010

AMENDED IN SENATE APRIL 27, 2010

AMENDED IN SENATE APRIL 15, 2010

AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 837

Introduced by Senator Florez

January 5, 2010

An act to add ~~Title 3.6 (commencing with Section 1883) to Part 4 of Division 3 of the Civil Code, and to add Sections 779.3 and 8364.5 to the Public Utilities Code, relating to utility service.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 837, as amended, Florez. Utility service: disconnection: smart meters: privacy.

(1) The federal Energy Independence and Security Act of 2007 states that it is the policy of the United States to maintain a reliable and secure electricity structure that achieves certain objectives that characterize a smart grid. Existing federal law requires each state regulatory authority, with respect to each electric utility for which it has ratemaking authority, and each nonregulated electric utility, to consider certain standards and to determine whether or not it is appropriate to implement those standards to carry out the purposes of the Public Utility Regulatory Policies Act. The existing standards include time-based metering and

communications, consideration of smart grid investments, and providing purchases with smart grid information, as specified.

Under existing law, the Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law requires the CPUC, by July 1, 2010, and in consultation with the State Energy Resources Conservation and Development Commission, the Independent System Operator, and other key stakeholders, to determine the requirements for a smart grid deployment plan consistent with certain policies set forth in state and federal law. Existing law requires that the smart grid improve overall efficiency, reliability, and cost-effectiveness of electrical system operations, planning, and maintenance. Existing law requires each electrical corporation, by July 1, 2011, to develop and submit a smart grid deployment plan to the commission for approval.

This bill would require the CPUC to ensure that each smart grid deployment plan authorized by the CPUC after January 1, 2012, include testing and technology standards, as specified. The bill would require each electrical corporation to ensure that each metering technology works properly in a field test in a real home setting.

(2) Existing law authorizes the CPUC to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law requires certain notice be given before an electrical, gas, heat, or water corporation may terminate residential service for nonpayment of a delinquent account and prohibits termination of service for nonpayment in certain circumstances.

This bill would require the CPUC to evaluate the impact of advanced metering infrastructure technology, commonly referred to as smart meters, on the frequency of energy utility disconnections, adopt policies to minimize any adverse impacts, and consider requiring electrical corporations and gas corporations to evaluate their customer communication policies relative to disconnections of service and share unsuccessful and successful practices in their creation of best practices.

~~(3) Existing law prescribes the circumstances under which telephone and telegraph corporations may release information regarding residential subscribers without their written consent. Existing law relative to restructuring of the electrical industry requires the commission to implement minimum standards relative to maintaining the confidentiality of residential and small commercial customer information by electric service providers.~~

~~This bill would prohibit individual electrical end-use customer information, as defined, in the custody of a 3rd-party demand response service provider, as defined, from being provided to any other person or entity by the service provider unless the customer expressly authorizes, in writing, that the information may be released to that person or entity and that person or corporation acknowledges, in writing, that the information is confidential and may not be shared, disclosed, made accessible, or utilized by any other person or entity without the express written consent of the customer. The bill would require each 3rd-party demand response service provider to adopt a statement of privacy and security principles for the data to which it has access as a result of providing demand response services. The bill would authorize a customer to give a 3rd party access to his or her electricity or gas usage data by providing written authorization to the customer's electrical corporation, gas corporation, or publicly owned electric or gas utility, to release the usage data to the 3rd party.~~

~~(4)~~

(3) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain of the bill's provisions would be within the act and because the bill would require action by the commission to implement certain of its requirements, a violation of these provisions would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. (a) Information concerning a utility customer's~~
2 ~~energy usage should be treated as confidential by electrical~~
3 ~~corporations and gas corporations, and the Legislature finds and~~
4 ~~declares that this right of privacy needs further protection in light~~
5 ~~of the detailed information on household energy usage that will~~
6 ~~be available to electrical corporations and gas corporations after~~

1 the statewide deployment of smart meter technology. If electrical
2 corporations begin to provide other services over wholly owned
3 medium, including broadband over powerline service, privacy
4 protections need to apply to these services.

5 (b) It is the intent of the Legislature to enact additional
6 protections to preserve the confidentiality of household energy
7 usage information and prevent its access and use by third parties
8 that provide equipment or software associated with deployment
9 and operation of the smart grid. A customer has a reasonable
10 expectation of privacy with respect to their occupancy, movement,
11 habits, or any other activity in their home that otherwise would
12 not be visible from outside. Smart appliance systems for the home
13 should protect a customer's reasonable expectation of privacy in
14 his or her activities and preferences, and the customer's right to
15 control the use of energy usage data collected from in-home smart
16 appliances, in-home sensors, or smart meters, should be protected
17 by limiting a utility's and other business processor's use of the
18 energy usage data, and limiting access and use by government and
19 private parties.

20 (c) Detailed and real-time consumption data held by, or
21 accessible to, electrical corporations, gas corporations, or third
22 parties should be available to law enforcement only with a warrant
23 or in those circumstances when a warrant is unnecessary to conduct
24 a search of a residence.

25 SEC. 2. Title 3.6 (commencing with Section 1883) is added to
26 Part 4 of Division 3 of the Civil Code, to read:

27
28 TITLE 3.6. CONFIDENTIALITY OF UTILITY USAGE
29 INFORMATION
30

31 1883. (a) For purposes of this title, "third-party demand
32 response service provider" means a person or corporation that is
33 not an electrical corporation who collects customer energy usage
34 data or collects that data and provides equipment, software, or
35 services that enable end-use electrical customers to reduce their
36 electricity usage in a given time period, or shift that usage to
37 another time period, in response to a price signal, a financial
38 incentive, an environmental condition, or a reliability signal.

39 (b) For purposes of this title, an authorization, acknowledgment,
40 or consent is "written" or "in writing" if made by an "electronic

1 record” that includes a “digital signature” as those terms are defined
2 in Section 1633.

3 1883.1. (a) Individual electrical end-use customer information
4 shall remain confidential. For purposes of this section, “individual
5 electrical end-use customer information” includes both of the
6 following:

7 (1) Electrical usage information about an individual, family,
8 household, or residence.

9 (2) Billing and credit information about an individual, family,
10 household, or residence.

11 (b) Individual electrical end-use customer information in the
12 custody of a third-party demand response service provider shall
13 not be shared, disclosed, or otherwise made accessible to any other
14 person or entity by a third-party demand response service provider
15 unless the customer expressly authorizes, in writing, the release
16 of that information to that person or entity and that person or entity
17 acknowledges, in writing, that the information is confidential and
18 shall not be shared, disclosed, made accessible, or utilized by any
19 other person or entity without the express written consent of the
20 customer. Individual electrical end-use customer information shall
21 not be sold under any circumstances.

22 (c) (1) (A) Each third-party demand response service provider,
23 before providing demand response service on customer residences,
24 shall adopt a statement of privacy and security principles.

25 (B) The statement of privacy and security principles shall
26 incorporate each of the following principles of the Fair Information
27 Practice Principles adopted by the Federal Trade Commission:

28 (i) Notice/Awareness.

29 (ii) Choice/Consent.

30 (iii) Access/Participation.

31 (iv) Integrity/Security.

32 (v) Enforcement/Redress.

33 (C) The statement of privacy and security principles shall
34 additionally incorporate the principle that maintenance of
35 information shall be minimized. The third-party demand response
36 service provider shall collect or retain only that individual customer
37 information that is directly relevant and necessary to accomplish
38 a purpose specified in the statement of privacy and security
39 principles. Individual customer information shall only be retained
40 for as long as necessary to fulfill the specified purpose.

~~(2) Upon adoption of the statement of privacy and security principles, the third-party demand response service provider shall make the statement of principles available on the third-party demand response service provider's Internet Web site or supply it to customers in writing or as an electronic record, as defined in Section 1633. Information that might be detrimental to the security of the demand response technology utilized by the third-party demand response service provider shall be omitted from the information made available on the Internet Web site or directly supplied to customers. The third-party demand response service provider shall provide a mechanism for customers to make inquiries about, or comment upon, the statement of principles.~~

~~(3) A third-party demand response service provider shall ensure that any person, other than the customer, including a contractor, equipment supplier, or software supplier of the third-party demand response service provider, is aware of the third-party demand response service provider's statement of privacy and security principles and agrees to act in a manner that is compatible with the statement of privacy and security principles.~~

~~(d) This section does not limit the ability of the electrical end-use customer to directly and voluntarily provide confidential information to any person or entity.~~

~~1883.5. (a) A customer may give a third party access to his or her electricity or gas usage data by providing written authorization to the customer's electrical corporation, gas corporation, or publicly owned electric or gas utility, to release the usage data to the third party.~~

~~(b) The electrical corporation, gas corporation, or publicly owned utility shall not be responsible for a third party's use or maintenance of utility usage data released to the third party pursuant to the customer's written authorization.~~

~~SEC. 3.~~

~~SECTION 1.~~ Section 779.3 is added to the Public Utilities Code, to read:

779.3. The Legislature finds and declares that, due to the importance of having electrical service to one's residence, the issue of utility service disconnections requires careful scrutiny by the commission. The commission shall evaluate the impact of advanced metering infrastructure technology on the frequency of energy utility disconnections and adopt policies to minimize any adverse

1 impacts. The commission shall also consider requiring electrical
2 corporations and gas corporations to evaluate their customer
3 communication policies relative to disconnections of service and
4 share unsuccessful and successful practices in their creation of
5 best practices.

6 ~~SEC. 4.~~

7 SEC. 2. Section 8364.5 is added to the Public Utilities Code,
8 to read:

9 8364.5. (a) The commission shall ensure that each smart grid
10 deployment plan authorized by the commission after January 1,
11 2012, includes testing and technology standards.

12 (b) Testing standards shall include all of the following:

13 (1) A requirement that the smart metering technology have a
14 comprehensive security audit. The security auditing plan and the
15 results of the ~~security audit shall be made publicly available~~
16 *comprehensive security audit shall be made publicly available in*
17 *a manner that protects the reasonable expectation of customers*
18 *in the privacy of customer-specific or customer-identifiable*
19 *records, upon approval by the commission. The commission shall*
20 *ensure that any customer-specific or customer-identifiable*
21 *information included in any submission by an electrical*
22 *corporation or gas corporation is not disclosed in response to a*
23 *request for public records pursuant to the California Public*
24 *Records Act (Chapter 3.5 (commencing with Section 6250) of*
25 *Division 7 of Title 1 of the Government Code).*

26 (2) A requirement that the manufacturer disclose to the electrical
27 corporation or gas corporation whether it created a cryptographic
28 protocol for data encryption and specify the protocol used.

29 (3) A requirement that the manufacturer submit to the electrical
30 corporation or gas corporation security audit results as part of a
31 direct access meter project self-certification program.

32 (c) Technology standards shall do both of the following:

33 (1) Ensure that the particular smart metering technology is
34 compatible with other smart technologies.

35 (2) Ensure that the particular smart metering technology is
36 compatible with the electrical corporation's energy usage data
37 collection and billing system.

38 (d) Each electrical corporation shall ensure that each metering
39 technology works properly in a field test in a real home setting.

1 ~~SEC. 5.~~

2 *SEC. 3.* No reimbursement is required by this act pursuant to
3 Section 6 of Article XIII B of the California Constitution because
4 the only costs that may be incurred by a local agency or school
5 district will be incurred because this act creates a new crime or
6 infraction, eliminates a crime or infraction, or changes the penalty
7 for a crime or infraction, within the meaning of Section 17556 of
8 the Government Code, or changes the definition of a crime within
9 the meaning of Section 6 of Article XIII B of the California
10 Constitution.